

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING STIEGLITZ, Officer of
SCHENCK'S RESORT OPERATING CORP.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period June 1, 1966
through August 31, 1966.

State of New York
County of Albany

Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 12th day of September , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Stieglitz

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Irving Stieglitz
317 Cross Street
Lakewood, New Jersey

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

12th day of September , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

September 12, 1974

Mr. Irving Stieglitz
317 Cross Street
Lakewood, New Jersey

Dear Mr. Stieglitz:

Please take notice of the **DETERMINATION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **1138 & 1243** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

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|--|---|---------------|
| In the Matter of the Application | : | |
| of | : | |
| IRVING STIEGLITZ, Officer of | : | |
| SCHENCK'S RESORT OPERATING CORP. | : | DETERMINATION |
| for Revision of a Determination or for | : | |
| Refund of Sales and Use Taxes under | : | |
| Articles 28 and 29 of the Tax Law for | : | |
| the Period June 1, 1966 through | : | |
| August 31, 1966. | : | |

Applicant, Irving Stieglitz, has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1966 through August 31, 1966. (File No. 90601935). A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on November 16, 1971, at 1:00 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Is applicant, Irving Stieglitz, personally liable, as an officer of Schenck's Resort Operating Corp., during the period June 1, 1966 through August 31, 1966, for sales tax due from the aforesaid corporation?

FINDINGS OF FACT

1. Scheneck's Resort Operating Corp. failed to pay over to the Sales Tax Bureau sales tax obtained from operation of Schenck's Paramount Hotel for the period June 1, 1966 through August 31, 1966, in the sum of \$7,887.60.
2. On September 8, 1969, the Sales Tax Bureau issued a Notice and Demand for Payment of Sales and Use Taxes Due against applicant, Irving Stieglitz, equal to the amount of New York State sales tax due

from Schenck's Resort Operating Corp. for the period June 1, 1966 through August 31, 1966, upon the grounds that he was a person required to collect, truthfully account for, and pay over said taxes, and that he failed to do so.

3. The Small Business Investment Corporation (hereinafter known as S.B.I.C.), known as Southern Tier Small Capital Corp., bought the Schenck's Paramount Hotel from the Schenck family. The S.B.I.C. in turn entered into negotiations to sell the hotel to a group known as Schenck's Resort Operating Corp. This group was headed by applicant, Irving Stieglitz, Mr. Bracconeri and Mr. Rotello.

4. Applicant, Irving Stieglitz, signed a resolution authorizing him, as president and treasurer of Schenck's Resort Operating Corp., to sign checks on behalf of the aforesaid corporation.

5. On April 18, 1966, applicant, Irving Stieglitz, resigned as president and treasurer of Schenck's Resort Operating Corp. He no longer hired or fired anyone and did none of the buying for the hotel after that date. He never cosigned a check after April 18, 1966. Applicant ceased having anything to do with operations of the hotel after that date.

6. Applicant, Irving Stieglitz, returned to the hotel in mid July, but Mrs. Rotello informed him that his services were no longer needed.

CONCLUSIONS OF LAW

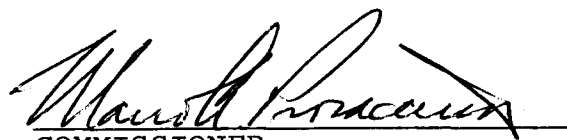
A. That applicant, Irving Stieglitz, as president and treasurer of Schenck's Resort Operating Corp. was not a person required to collect, truthfully account for, and pay over New York State sales tax from said corporation for the period June 1, 1966 through August 31, 1966, in accordance with the meaning and intent of section 1131 of the Tax Law since he had no authority or voice and was no longer an employee of the corporation.

B. That since applicant, Irving Stieglitz, was not a person required to collect, truthfully account for, and pay over New York State sales tax due from Schenck's Resort Operating Corp., for the period June 1, 1966 through August 31, 1966, therefore, a notice of payment due, equal to the amount withheld by the corporation, was improperly assessed against him in accordance with the meaning and intent of section 1133 of the Tax Law.


C. That the application of Irving Stieglitz is granted and the Notice and Demand for Payment for sales and use taxes due issued September 8, 1969, is cancelled.

DATED: Albany, New York
September 12, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER